

E-Filed 11/27/2007

NOT FOR CITATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JONATHAN C. KALTWASSER,
Plaintiff,
v.
CINGULAR WIRELESS LLC, a Delaware
Corporation,
Defendant.

Case Number C07-00411

**ORDER¹ GRANTING MOTION TO
ADJOURN THE HEARING WITH
LIMITED DISCOVERY**

[re: docket no. 42]

Defendant has filed an emergency motion for leave to take arbitration-related discovery and to postpone the hearing on its motion to compel arbitration now scheduled for November 30, 2007. Defendant contends that postponement of the November 30 hearing is necessary to permit it to respond to issues raised for the first time in Plaintiff's opposition to the motion to compel arbitration.

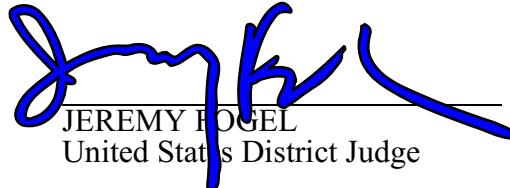
Courts routinely grant discovery if the discovery sought is germane to the issues necessary to resolve a motion and deny discovery where the motion may be resolved as a matter of law based on undisputed facts. *See, e.g., Zeno v. Ford Motor Co.*, 480 F. Supp. 2d 825, 840

¹ This disposition is not designated for publication and may not be cited.

1 (W.D. Pa. 2007) (denying summary judgment on issues resolvable as a matter of law based on
 2 the undisputed record and ordering discovery on a limited issue dependent on disputed fact);
 3 *Morton v. Hall*, 455 F. Supp. 2d 1066, 1079 (C.D. Cal. 2006) (“Because the motion for summary
 4 judgment has been decided on procedural rounds it would be useless to permit discovery.”).
 5 While the Court will not postpone the November 30 hearing in order to allow unrestricted
 6 “arbitration related discovery,” it agrees that Defendant is entitled to limited discovery in order to
 7 respond to Plaintiff’s contention that he neither received nor accepted a modification of the
 8 arbitration agreement in December 2006. The validity and legal effect of that modification bears
 9 directly on question of arbitrability.

10 Good cause therefor appearing, IT IS HEREBY ORDERED that Defendant’s emergency
 11 motion is GRANTED. The hearing on the motion to compel arbitration is hereby continued to
 12 January 25, 2008 at 9am. Any supplemental briefing with respect to the validity and legal effect
 13 of the December 2006 modification to the subject arbitration agreement shall be filed on or
 14 before January 18, 2008.

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 16 DATED: November 27, 2007.

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 19 JEREMY FOGEL
 United States District Judge
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1 This Order has been served upon the following persons:
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